



City Council Chambers  
3300 Capitol Avenue  
Fremont, California

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### City Council

Bob Wasserman, Mayor  
Suzanne Lee Chan, Vice Mayor  
Anu Natarajan  
Bill Harrison  
Dominic Dutra

### City Staff

Fred Diaz, City Manager  
Harvey E. Levine, City Attorney  
Mark Danaj, Assistant City Manager

Harriet Commons, Finance Director  
Marilyn Crane, Information Technology Svcs. Dir.  
Annabell Holland, Community Services Director  
Norm Hughes, City Engineer  
Kelly Kline, Economic Development Director  
Bruce Martin, Fire Chief  
Nadine Nader, City Clerk/Asst. to City Manager  
Jim Pierson, Public Works Director  
Jeff Schwob, Community Dev. Director  
Suzanne Shenfil, Human Services Director  
Craig Steckler, Chief of Police  
Brian Stott, Human Resources Director  
Elisa Tierney, Redevelopment Director

## City Council Agenda and Report [Redevelopment Agency of Fremont]

### General Order of Business

1. Preliminary
  - Call to Order
  - Salute to the Flag
  - Roll Call
2. Consent Calendar
3. Ceremonial Items
4. Public Communications
5. Scheduled Items
  - Public Hearings
  - Appeals
  - Reports from Commissions, Boards and Committees
6. Report from City Attorney
7. Other Business
8. Council Communications
9. Adjournment

### Order of Discussion

Generally, the order of discussion after introduction of an item by the Mayor will include comments and information by staff followed by City Council questions and inquiries. The applicant, or their authorized representative, or interested citizens, may then speak on the item; each speaker may only speak once to each item. At the close of public discussion, the item will be considered by the City Council and action taken. Items on the agenda may be moved from the order listed.

### Consent Calendar

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which case the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address the City Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.



## **Addressing the Council**

Any person may speak once on any item under discussion by the City Council after receiving recognition by the Mayor. Speaker cards will be available prior to and during the meeting. To address City Council, a card must be submitted to the City Clerk indicating name, address and the number of the item upon which a person wishes to speak. When addressing the City Council, please walk to the lectern located in front of the City Council. State your name. In order to ensure all persons have the opportunity to speak, a time limit will be set by the Mayor for each speaker (see instructions on speaker card). In the interest of time, each speaker may only speak once on each individual agenda item; please limit your comments to new material; do not repeat what a prior speaker has said.

## **Oral Communications**

Any person desiring to speak on a matter which is not scheduled on this agenda may do so under the Oral Communications section of Public Communications. Please submit your speaker card to the City Clerk prior to the commencement of Oral Communications. **Only those who have submitted cards prior to the beginning of Oral Communications will be permitted to speak.** Please be aware the California Government Code prohibits the City Council from taking any immediate action on an item which does not appear on the agenda, unless the item meets stringent statutory requirements. The Mayor will limit the length of your presentation (see instructions on speaker card) and each speaker may only speak once on each agenda item.

**To leave a voice message for all Councilmembers and the Mayor simultaneously, dial 284-4080.**

**The City Council Agendas may be accessed by computer at the following Worldwide Web Address: [www.fremont.gov](http://www.fremont.gov)**

## **Information**

Copies of the Agenda and Report are available in the lobbies of the Fremont City Hall, 3300 Capitol Avenue and the Development Services Center, 39550 Liberty Street, on Friday preceding a regularly scheduled City Council meeting. Supplemental documents relating to specific agenda items are available at the Office of the City Clerk.

The regular meetings of the Fremont City Council are broadcast on Cable Television Channel 27 and can be seen via webcast on our website ([www.Fremont.gov](http://www.Fremont.gov)).

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 2 working days in advance of the meeting by contacting the City Clerk at (510) 284-4060. Council meetings are *open captioned* for the deaf in the Council Chambers and *closed captioned* for home viewing.

## **Availability of Public Records**

All disclosable public records relating to an open session item on this agenda that are distributed by the City to all or a majority of the City Council less than 72 hours prior to the meeting will be available for public inspection in specifically labeled binders located in the lobby of Fremont City Hall, 3300 Capitol Avenue during normal business hours, at the time the records are distributed to the City Council.

Information about the City or items scheduled on the Agenda and Report may be referred to:

Address: City Clerk  
City of Fremont  
3300 Capitol Avenue, Bldg. A  
Fremont, California 94538  
Telephone: (510) 284-4060

*Your interest in the conduct of your City's business is appreciated.*

**AGENDA**  
**FREMONT CITY COUNCIL REGULAR MEETING**  
**SEPTEMBER 20, 2011**  
**COUNCIL CHAMBERS, 3300 CAPITOL AVE., BUILDING A**  
**7:00 P.M.**

**1. PRELIMINARY**

- 1.1 Call to Order
- 1.2 Salute the Flag
- 1.3 Roll Call
- 1.4 Announcements by Mayor / City Manager

**2. CONSENT CALENDAR**

*Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which event the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.*

- 2.1 *Motion to Waive Further Reading of Proposed Ordinances  
(This permits reading the title only in lieu of reciting the entire text.)*
- 2.2 *Approval of Minutes – for the Special and Regular Meetings of September 6, 2011  
and for the Special and Regular Meetings of July 12, 2011*
- 2.3 *Second Reading and Adoption of an Ordinance of the City of Fremont, Approving a  
One-Year Extension to the Term of a Non-Exclusive Franchise with Air Products and  
Chemicals, Inc., a Delaware Corporation, to Install, Construct, Maintain, and Use  
Pipes and Appurtenances for Transmitting and Distributing Nitrogen Gas in Public  
Rights-of-Way*

*RECOMMENDATION: Adopt ordinance.*

- 2.4 *Second Reading and Adoption of an Ordinance of the City of Fremont Rezoning  
Property Located at 1481 Mowry Avenue from Planned District P-2001-174 to Munti-  
Family Residence R-3-23*

*RECOMMENDATION: Adopt ordinance.*

2.5 *FIRST RESPONDER ADVANCED LIFE SUPPORT SERVICES AGREEMENT*

*Approval of First Responder Advanced Life Support Services Agreement between the City of Fremont and the County of Alameda*

*Contact Person:*

<i>Name:</i>	<i>Ron Maize</i>	<i>Bruce Martin</i>
<i>Title:</i>	<i>Deputy Fire Chief</i>	<i>Fire Chief</i>
<i>Dept.:</i>	<i>Fire</i>	<i>Fire</i>
<i>Phone:</i>	<i>510-494-4253</i>	<i>510-494-4202</i>
<i>E-Mail:</i>	<i>rmaize@fremont.gov</i>	<i>bmartin@fremont.gov</i>

*RECOMMENDATION: Authorize the City Manager to execute the First Responder Advanced Life Support Services Agreement between the City of Fremont and County of Alameda.*

2.6 *ORACLE/PEOPLESOFT CONTRACT APPROVAL*

*Authorize the City Manager, or Designee, to Issue a Purchase Order and to Execute Implementing Documents with Oracle America, Inc., for the Annual Software Support and Maintenance of the Databases, PeopleSoft HR/Payroll Application, and User Productivity Kit*

*Contact Person:*

<i>Name:</i>	<i>Alicia Hernández</i>	<i>Marilyn J. Crane</i>
<i>Title:</i>	<i>Division Manager</i>	<i>Director</i>
<i>Dept.:</i>	<i>Business Systems</i>	<i>Information Technology Services</i>
<i>Phone:</i>	<i>510-494-4805</i>	<i>510-494-4802</i>
<i>E-Mail:</i>	<i>bahernandez@fremont.gov</i>	<i>mcrane@fremont.gov</i>

*RECOMMENDATION: Authorize the City Manager, or his designee, to issue a purchase order and to execute implementing documents with Oracle America, Inc., for the annual software support and maintenance of Oracle databases, PeopleSoft HR/ Payroll, and User Productivity Kit in the amount not-to-exceed \$248,628.64, including applicable sales tax.*

2.7 *VILLA D'ESTE PLANNED DISTRICT MAJOR AMENDMENT (PLN2012-00050)*

*Public Hearing (Published Noticed) to Consider Planning Commission Recommendation to Introduce an Ordinance Adopting a Planned District Major Amendment to P-2005-80 (Villa D'este) Amending Conditions of Approval Related to Building and Site Design Modifications for Three Multi-Family Buildings Totaling 18 Units at the Southeast Quadrant of Ardenwood Boulevard and Paseo Padre Parkway in Northern Plain Planning Area*

*Contact Person:*

<i>Name:</i>	<i>Scott Ruhland</i>	<i>Barbara Meerjans</i>
<i>Title:</i>	<i>Associate Planner</i>	<i>Interim Planning Manager</i>
<i>Dept.:</i>	<i>Community Development</i>	<i>Community Development</i>
<i>Phone:</i>	<i>510-494-4453</i>	<i>510-494-4551</i>
<i>E-Mail:</i>	<i>sruhland@fremont.gov</i>	<i>bmeerjans@fremont.gov</i>

**RECOMMENDATION:**

1. *Hold public hearing.*
2. *Find that, consistent with CEQA Guidelines 15162, no significant changes to the project or site circumstances have occurred, nor has new information of substantial importance been discovered, and the previously adopted Mitigated Negative Declaration and Mitigation Monitoring Plan are still valid and no further environmental analysis is required, and find this action reflects the independent judgment of the City of Fremont.*
3. *Find Planned District Major Amendment is in conformance with the relevant provisions contained in the City's General Plan. These provisions include the designations, goals, objectives and policies set forth in the General Plan's Land Use and Housing Chapters as enumerated within the staff report.*
4. *Find the Precise Plans for the project as depicted in Exhibit "A" (precise site plan, floor plans, elevations, engineering plans and landscape plans), fulfills the applicable requirements set forth in the Fremont Municipal Code.*
5. *Waive reading and introduce an ordinance approving the Precise Plans for Buildings 17-19 as shown on Exhibit "A" More specifically, sheets A1.12-1.18, L2.5-2.6, L2.11-2.12 and C-0 through C-3 consisting of precise site plan, floor plans, elevations, engineering plans and landscape plans for Planned District Major Amendment to P-2005-80 be approved, based upon the findings contained in this report and subject to the conditions of approval set forth in Exhibit "B".*
6. *Direct staff to prepare and the City Clerk to publish a summary of the ordinance.*

**2.8 PARTICIPATION IN COUNTY HOME PROGRAM**

*Request for Continued Participation in the Alameda County HOME Investment Partnership Act (HOME) Program Consortium*

**Contact Person:**

<b>Name:</b>	<i>May Lee</i>	<i>Elisa Tierney</i>
<b>Title:</b>	<i>Housing Program Manager</i>	<i>Redevelopment Agency Director</i>
<b>Dept.:</b>	<i>Office of Housing &amp; Redevelopment</i>	<i>Office of Housing &amp; Redevelopment</i>
<b>Phone:</b>	<i>510 494-4506</i>	<i>510 494-4501</i>
<b>E-Mail:</b>	<i>mlee@fremont.gov</i>	<i>etierney@fremont.gov</i>

**RECOMMENDATION: Adopt a resolution:**

1. *Approving participation in the Alameda County HOME Program Consortium for the next three (3) federal Fiscal Years 2012/13, 2013/14, and 2014/15 for the purpose of securing federal HOME funds; and*
2. *Authorizing the City Manager or his designee to execute the participation agreement between the City and Alameda County and to take all actions necessary for participation in the Consortium.*

**2.9 SENIOR MOBILE MENTAL HEALTH TEAM PROJECT**

*Authorization to Contract with Alameda County Behavioral Health Care Services for a Mobile Integrated Assessment and Treatment Team for Seniors*

**Contact Person:**

<b>Name:</b>	<i>Karen Grimsich</i>	<i>Suzanne Shenfil</i>
<b>Title:</b>	<i>AFS Administrator</i>	<i>Director</i>
<b>Dept.:</b>	<i>Human Services</i>	<i>Human Services</i>
<b>Phone:</b>	<i>510-574-2062</i>	<i>510-574-2051</i>
<b>E-Mail:</b>	<i>KGrimsich@fremont.gov</i>	<i>sshenfil@fremont.gov</i>

**RECOMMENDATION:** *Authorize the City Manager to enter into a contract with Alameda County Behavioral Health Care Services to provide services through the Mobile Integrated Assessment and Treatment Team for Seniors for the period of July 1, 2011 through June 30, 2012.*

**2.10 APPROVAL AND AUTHORIZATION TO EXECUTE AN AGENCY TRANSFER PAYMENT AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY AND THE CITY OF FREMONT**

*Authorization for the City Manager to Enter into an Agency Transfer Payment Agreement between the Redevelopment Agency and the City of Fremont to Allow for the Payment of Certain Required Remittance Payments Pursuant to Part 1.9 of the Redevelopment Law*

**Contact Person:**

<b>Name:</b>	<i>Elisa Tierney</i>	<i>Harriet Commons</i>
<b>Title:</b>	<i>Redevelopment Agency Director</i>	<i>Director</i>
<b>Dept.:</b>	<i>Community Development</i>	<i>Finance</i>
<b>Phone:</b>	<i>510-494-4501</i>	<i>510-284-4010</i>
<b>E-Mail:</b>	<i>etierney@fremont.gov</i>	<i>hcommons@fremont.gov</i>

**RECOMMENDATION:** *Approve a resolution and authorize the City Manager to enter into an Agency Transfer Payment Agreement between the Redevelopment Agency and the City of Fremont to allow for the payment of certain required remittance payments pursuant to Part 1.9 of the Redevelopment Law.*

**2.11 JOINT POWERS AGREEMENT WITH NEW HAVEN UNIFIED SCHOOL DISTRICT**

*Approve a Joint Powers Agreement with New Haven Unified School District for the Provision of Mental Health Services*

**Contact Person:**

<b>Name:</b>	<i>Iris Preece</i>	<i>Suzanne Shenfil</i>
<b>Title:</b>	<i>YFS Administrator</i>	<i>Director</i>
<b>Dept.:</b>	<i>Human Services</i>	<i>Human Services</i>
<b>Phone:</b>	<i>510-574-2128</i>	<i>510-574-2051</i>
<b>E-Mail:</b>	<i>ipreece@fremont.gov</i>	<i>sshenfil@fremont.gov</i>

*RECOMMENDATION: Authorize the City Manager or designee to execute a joint powers agreement with the New Haven Unified School District for the provision of mental health services.*

**3. CEREMONIAL ITEMS – None.**

**4. PUBLIC COMMUNICATIONS**

**4.1 Oral and Written Communications**

REDEVELOPMENT AGENCY – The Redevelopment Agency Board will convene at this time and take action on the agenda items listed on the Redevelopment Agency Agenda. [See separate agenda](#) (yellow paper).

PUBLIC FINANCING AUTHORITY – None. [See separate cancellation notice](#). (lilac paper).

**CONSIDERATION OF ITEMS REMOVED FROM CONSENT CALENDAR**

**5. SCHEDULED ITEMS**

**5.1 ANIMAL FANCIER PERMIT APPEAL TO COUNCIL**

Appeal To the City Council From Denial Of An Application For An Animal Fancier Permit To Keep Two Hives of Bees and Six Chickens At 37017 Contra Costa Avenue

**Contact Person:**

Name: Mark Riggs  
Title: Lieutenant  
Dept.: Police  
Phone: 510-790-6646  
E-Mail: mriggs@fremont.gov

Craig T. Steckler  
Chief of Police  
Police  
510-790-6810  
csteckler@fremont.gov

RECOMMENDATION: Staff recommends Council deny the appeal and uphold the denial of the Animal Fancier Permit by the Animal Services Superintendent to keep beehives at 37017 Contra Costa Avenue.

**5.2 AFFORDABLE HOUSING ORDINANCE ZONING TEXT AMENDMENT**

Public Hearing (Published Notice; Display Ad) to Consider Planning Commission Recommendation and Introduce an Ordinance to Amend Fremont Municipal Code Title VIII, Chapter 2, Article 21.7, Affordable Housing

**Contact Person:**

Name:	Kelly G. Diekmann	Jeff Schwob
Title:	Senior Planner	Director
Dept.:	Planning	Community Development
Phone:	510-494-4540	510-494-4527
E-Mail:	kdiekmann@fremont.gov	jschwob@fremont.gov

**RECOMMENDATION:**

1. Hold the Public Hearing.
2. Recommend the City Council find the proposed zoning text amendment consistent with the previously adopted negative declaration and that it requires no subsequent environmental review.
3. Recommend that City Council find the public necessity, convenience and general welfare require the adoption of this Zoning Text Amendment as described in the staff report findings section.
4. Waive full reading and introduce an ordinance amending Title VII, Chapter 2, Article 21.7 (Affordable Housing Ordinance).
5. Direct staff to prepare and the clerk to publish a summary of the ordinance.

**6. REPORT FROM CITY ATTORNEY**

- 6.1 Report Out from Closed Session of Any Final Action

**7. OTHER BUSINESS**

**7.1 GENERAL PLAN EIR**

Presentation on the Draft Environmental Impact Report (DEIR) for the General Plan Update

**Contact Person:**

Name:	Kelly Diekmann	Dan Schoenholz
Title:	Senior Planner	Policy and Special Projects Manager
Dept.:	Community Development	Community Development
Phone:	510-494-4540	510-494-4438
E-Mail:	kdiekmann@fremont.gov	dschoenholz@fremont.gov

RECOMMENDATION: Receive presentation and provide feedback to staff.



**8. COUNCIL COMMUNICATIONS**

8.1 Council Referrals – None.

8.2 Oral Reports on Meetings and Events

**9. ADJOURNMENT**





REPORT SECTION  
FREMONT CITY COUNCIL  
REGULAR MEETING

SEPTEMBER 20, 2011



- \*2.3 Second Reading and Adoption of an Ordinance of the City of Fremont, Approving a One-Year Extension to the Term of a Non-Exclusive Franchise with Air Products and Chemicals, Inc., a Delaware Corporation, to Install, Construct, Maintain, and Use Pipes and Appurtenances for Transmitting and Distributing Nitrogen Gas in Public Rights-of-Way**

**ENCLOSURE:** [Draft Ordinance](#)

**RECOMMENDATION:** Adopt ordinance.

- \*2.4 Second Reading and Adoption of an Ordinance of the City of Fremont Rezoning Property Located at 1481 Mowry Avenue from Planned District P-2001-174 to Munti-Family Residence R-3-23**

**ENCLOSURE:** [Draft Ordinance](#)

**RECOMMENDATION:** Adopt ordinance.

**\*2.5 FIRST RESPONDER ADVANCED LIFE SUPPORT SERVICES AGREEMENT**  
**Approval of First Responder Advanced Life Support Services Agreement between the City of Fremont and the County of Alameda**

**Contact Person:**

Name:	Ron Maize	Bruce Martin
Title:	Deputy Fire Chief	Fire Chief
Dept.:	Fire	Fire
Phone:	510-494-4253	510-494-4202
E-Mail:	rmaize@fremont.gov	bmartin@fremont.gov

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**Executive Summary:** Staff recommends that the City Council authorize the City Manager to enter into an agreement with Alameda County covering First Responder Advanced Life Support (FRALS) services provided by the Fremont Fire Department. With minor modifications. This FRALS agreement is a renewal of a prior agreement; the current agreement is set to expire on October 31, 2011.

**BACKGROUND:** Alameda County is the local Emergency Medical Services (EMS) agency responsible for oversight of all first responder paramedic services and for designating paramedic service providers within the County. In most local jurisdictions, Alameda County relies upon municipalities to provide first responder paramedic service at the scene of any medical emergency. To encourage cities to provide this service, the County began in 2000 to provide a subsidy to participating local fire departments that staff a full-time paramedic on each fire company, in exchange for the city's commitment to meet response time and service quality standards. To receive the subsidy, Fremont entered into contracts with the County in 2000 and again in 2004. The 2004 Agreement will expire October 31, 2011.

**DISCUSSION/ANALYSIS:** The City is compensated based on the number of paramedic units available per day as defined in the agreement. The City currently has 12 paramedic companies in operation; one additional company is allowable under the contract. Under the proposed FRALS agreement, Fremont will be compensated at a maximum rate of \$42,893 for FY 2011/12 for each fully operational paramedic company. The City anticipates receiving approximately \$514,717 in FY 2011/12.

The agreement sets forth maximum response times for FRALS units to arrive on scene: eight minutes 30 seconds from the time the Alameda County Regional Emergency Communications Center receives the call until the unit's arrival on-scene, 90% of the time. Failure to meet this standard, if frequent, will result in fines being assessed according to a schedule. As in the previous FRALS agreement, there is a commitment to quality improvement, record-keeping and to following the Alameda County protocols for service provision and training of paramedics.

The County substantially changed the contract for this renewal. City staff negotiated a number of changes including the inclusion of a 90 day opt-out provision. This provision was included in previous contracts but removed by the County from this renewal agreement. Restoring the opt-out provision to the Agreement ensures that the Council has the ability to determine staffing levels and response times during the life of the contract without breaching the contract. As negotiated, the new agreement will not significantly change the operational elements of Fremont's paramedic EMS program. In addition,

because the County contracts separately with a private provider to provide advanced life support (ALS) ambulance services in Fremont, the agreement requires that the City not compete with the County for emergency ambulance services.

**FISCAL IMPACT:** Renewal of the FRALS contract will make the City eligible to receive revenues from the County for paramedic services in the amount of \$514,717 in FY 2011/12. The four subsequent years will include an annual 2% COLA increase. The value of the five-year contract agreement totals \$2,680,799.

**ENVIRONMENTAL REVIEW:** N/A

**ENCLOSURE:** None.

**RECOMMENDATION:** Authorize the City Manager to execute the First Responder Advanced Life Support Services Agreement between the City of Fremont and County of Alameda.

## **\*2.6 ORACLE/PEOPLESOFT CONTRACT APPROVAL**

**Authorize the City Manager, or Designee, to Issue a Purchase Order and to Execute Implementing Documents with Oracle America, Inc., for the Annual Software Support and Maintenance of the Databases, PeopleSoft HR/Payroll Application, and User Productivity Kit**

### **Contact Person:**

Name:	Alicia Hernández	Marilyn J. Crane
Title:	Division Manager	Director
Dept.:	Business Systems	Information Technology Services
Phone:	510-494-4805	510-494-4802
E-Mail:	bahernandez@fremont.gov	mcrane@fremont.gov

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**Executive Summary:** The City has two types of support agreements with Oracle: one for the Oracle databases and a combined one for Oracle/PeopleSoft HRMS and Oracle User Productivity Kit (UPK). The existing support agreements for the databases and PeopleSoft HR/Payroll expire on October 30, 2011. The existing support agreement for UPK expires on May 18, 2012. The annual support cost for the Oracle databases for the period of October 31, 2011 through October 30, 2012, is \$143,314.17. The annual support cost for the HR/Payroll application, including MicroFocus COBOL compiler, and UPK is \$105,314.47. The combined total of the two Oracle contracts exceeds \$100,000 and requires City Council approval.

**BACKGROUND:** Since 1990, the City has used the Oracle relational database management system in the City's major business applications, including Human Resources/Payroll, Police Computer-Aided Dispatch, Police Records Management System, Document Management, Building Permits, and Recreation Class Registration. Since, 2000 the City has used the PeopleSoft HR/Payroll system, which Oracle acquired in 2005. UPK was purchased in 2011 to provide a centralized location for documenting the City's critical business processes and to aid in the deployment of new applications by providing end-users with on-demand training.

There is no separate agreement with Oracle for support of the database and applications. Services are provided as part of Oracle's standard technical support program, for which a contract was previously executed. The current software support agreements for the database, HR/Payroll application, and MicroFocus COBOL software compiler expire on October 30, 2011. The software support for UPK expires on May 18, 2012.

**DISCUSSION/ANALYSIS:** The Oracle software support agreements include assistance with technical problems, software fixes, and upgrades of the software and database to the current version. Software support for the HR/Payroll application also includes updates for payroll tax and UPK content.

It is important to have support agreements provided by the vendor in order to ensure that the HR/Payroll application, the database used by that application, and the databases used by other critical applications in the City are kept updated. Software support agreements are also necessary for ongoing support and maintenance in the event of system malfunction.



The new support agreements include a partial year of support for UPK effective from May 19, 2012 through October 30, 2012, so that the expiration date coincides with that of the agreements for Oracle support for the databases and PeopleSoft application.

**FISCAL IMPACT:** Funds are appropriated for the Oracle software support agreements in the Information Technology Services Department's FY 2011/12 budget (620-1714-6106).

**ENVIRONMENTAL REVIEW:** Not Applicable

**ENCLOSURE:** None

**RECOMMENDATION:** Authorize the City Manager, or his designee, to issue a purchase order and to execute implementing documents with Oracle America, Inc., for the annual software support and maintenance of Oracle databases, PeopleSoft HR/ Payroll, and User Productivity Kit in the amount not-to-exceed \$248,628.64, including applicable sales tax.

**\*2.7 VILLA D'ESTE PLANNED DISTRICT MAJOR AMENDMENT (PLN2012-00050)  
Public Hearing (Published Noticed) to Consider Planning Commission Recommendation to  
Introduce an Ordinance Adopting a Planned District Major Amendment to P-2005-80  
(Villa D'este) Amending Conditions of Approval Related to Building and Site Design  
Modifications for Three Multi-Family Buildings Totaling 18 Units at the Southeast  
Quadrant of Ardenwood Boulevard and Paseo Padre Parkway in Northern Plain  
Planning Area**

**Contact Person:**

Name:	Scott Ruhland	Barbara Meerjans
Title:	Associate Planner	Interim Planning Manager
Dept.:	Community Development	Community Development
Phone:	510-494-4453	510-494-4551
E-Mail:	sruhland@fremont.gov	bmeerjans@fremont.gov

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**Executive Summary:** Pulte Homes recently received approval to modify the building and site design for the Villa D'este project on September 6, 2011 by the City Council. Pulte has made the same request involving the same design changes for three additional buildings totaling 18 units that were not included in the recent approval.

Pulte Homes is the current owner of the Villa D'este project. Villa D'este Planned District was approved in 2006 for 33 single-family homes and 243 multi-family homes, although the recent approval reduced this to 240 multi-family homes. The single-family homes have all been constructed and 114 of the multi-family homes have been constructed. The community building and surrounding site improvements have also been completed. Pulte has proposed an amendment to the Planned District to modify the building design, and slight modifications to site design, for three additional buildings which total eighteen units. The street network, building footprints, landscape design and other features remain the same as previously approved. Staff recommends that Planning Commission recommend the Planned District Major Amendment to City Council. The Planning Commission considered the item at their August 25, 2011 public hearing and recommended the project (7-0-0-0) to the City Council.

**BACKGROUND:** The original Planned District, P-2005-80 was approved on July 26, 2005 as part of Housing Element Implementation Program 21. A Planned District Major Amendment (PLN2006-00172) to P-2005-80 for site plan and architectural approval and Vesting Tentative Tract Map 7735 was approved by City Council on June 6, 2006 for the construction of 276 residential units and associated site improvements. John Laing Homes was the applicant and property owner at that time. Pulte Homes acquired the property in 2010 and has been constructing the remaining units and completing the project.

On June 23, 2011, the Planning Commission recommended a similar Planned District Major Amendment to the City Council to allow Pulte to modify the building and site design of the original project and reduce the total number of multi-family units from 243 to 240. The City Council approved the Planned District Major Amendment on September 6, 2011.

## DISCUSSION/ANALYSIS:

### *Project Description*

The proposed project is a request for a Planned District Major Amendment to modify the approved building design for three multi-family buildings, identified as Buildings 17-19 on the site plan. The three buildings contain six units each for a total of eighteen units. There is no change to the unit count proposed by this amendment. Minor site modifications, including two new driveways, are also proposed.

The originally approved project includes units that range in size from approximately 1,400-1,900 square feet in three different floor plans. The proposed modification includes units that range from 1,200 to 1,990 square feet in four different floor plans increasing the options and home sizes for the targeted market. The buildings will be a similar 3-story, alley loaded configuration but interior floor plans have been modified to move the living areas to the second floor and provide a more efficient layout. Some buildings have side garage access for the homes on the ends of the buildings. This feature is new to the project and will necessitate new side access driveways that were not previously included. The driveways act as auto courts and will include decorative paving. Staff finds this change minimal and has been incorporated into the project in an aesthetically pleasing, efficient manner.

Staff finds that the proposed modification to buildings and floor plans, and slight change to the site design are in keeping with the general design qualities and parameters originally approved because the number of overall homes is the same and building footprints and building height have not changed.

### *General Plan Conformance*

The existing General Plan land use designation for the project site is High Density Residential, 23-27 units/acre. The proposed project is consistent with the existing General Plan land use designation for the project site because the project still meets the minimum density requirements. The following General Plan Goals, Objectives and Policies are applicable to the proposed project:

The following General Plan Goals, Objectives and Policies are still applicable to the proposed project:

- *Housing Goal 2 – High quality and well-designed new housing of all types throughout the City.*
- *Land Use Goal 1 – New housing development while conserving the character of the City's existing single family residential neighborhoods.*

The project remains consistent with these goals because the project provides variety in housing type by offering four floor plans that are well-designed. Nearby single-family areas, off-site and adjacent to the project remain unchanged.

- *Land Use Policy 1.23 – A variety of unit types and sizes shall be encouraged within each multi-family project.*

The project conforms to this policy because new architectural styles are proposed, each with a variety of floor plans and unit sizes.

- *Land Use Policy 1.25 – Where several multi-family projects are on adjacent parcels of land, a variety of architectural and site design treatments shall be encouraged. However, an architectural or landscape design theme for several parcels may be appropriate.*

The project conforms to this policy because new architectural styles have been designed independently although in a manner to complement each other. The range in architectural styles will help to reduce the monotony sometimes associated with phased housing developments. A general landscape theme has been provided for the project that complements the entire site. Overall, the change in building and site design does not alter consistency with the General Plan.

### ***Zoning Regulations***

#### ***Parking***

All of the units include two-car garages as previously approved. There is no change to the guest parking provided.

#### ***Affordable Housing***

The project and proposed Planned District Amendment does not modify the Affordable Housing Agreement to provide 55 below market rate (BMR) units. Twelve BMR units have already been constructed and Pulte will provide the remaining 43 units. The remaining units will be constructed in phases as the project is completed. (Condition A-17)

#### ***Site Planning***

The site plan for the project remains the same. The primary streets, utilities and infrastructure have already been installed per the tract improvements and the proposed amendment does not alter the vehicular circulation network. All 33 single-family homes and 11 second units have been constructed. 114 multi-family units have also been constructed. Proposed building locations for the remaining units are the same. Pedestrian connections are generally provided as previously approved and some new pedestrian connections have also been provided.

The largest change to the site plan is the addition of three new driveways/auto courts that provide side access to two of the buildings. The side driveways provide garage access to the reconfigured buildings. Each auto court provides access to two garages and thus will not be heavily traveled. This change has replaced some landscaped areas with impervious surface area and pedestrian access locations although new access in different locations has been provided. The slight changes to the site design will require some utility relocation and a lot line adjustment. Prior to building permit issuance, the applicant will be required to vacate existing easements and dedicate new public utility easements, and record the lot line adjustment (Conditions E-9, E-10).

#### ***Architecture***

The buildings have been redesigned to maximize floor area and make more efficient use out of the floor plans. The remaining buildings to be constructed in the project consist of 3, 5, 6 and 7-unit buildings. The building footprints and heights have not changed, although the form and bulk of the buildings has changed to allow for the proposed modifications. The new design consists of three architectural styles, all somewhat similar, and three color palettes that will help add variety to the new buildings. The building design is contemporary in style and incorporates simple lines, form and massing. Buildings materials include stucco as the primary material and brick/stone veneer as the secondary material.

Architectural details add tertiary materials and another level of interest. These include louvered shutters, decorative metal railings and grilles, wood fascia, wood railings, decorative light fixtures and decorative garage doors. Roof materials consist of concrete tiles.

#### *Green Building Technologies*

The project will be required to comply with CalGreen, the State's Green Building Code, and the City of Fremont Tier 1 requirements.

#### *Open Space/Landscape Design*

Slight modifications are proposed to the approved landscape design. The modifications result from the additions of side access driveways associated with the new product type. There is no change to the private open space areas. Additional conditions have been added to the project to ensure conformance with new landscape development requirements (Bay Friendly Landscaping) and to ensure the original intent is achieved (Landscape Conditions 1-8).

#### *Circulation*

There is no change to the approved circulation system.

#### *Grading & Drainage*

There is no change to the approved grading or storm drain system. Stormwater treatment bio-retention locations will accommodate the new building locations and any increase in impervious runoff. Existing stormwater treatment mechanical units were designed with extra capacity for slight increase of impervious runoff. Any additional runoff increase above the design capacity will be diverted or mitigated with other stormwater treatment measures.

#### **FISCAL IMPACT:** N/A

**ENVIRONMENTAL REVIEW:** In 2006, a comprehensive environmental analysis of the project occurred pursuant to the California Environmental Quality Act (CEQA). That analysis identified concerns regarding potential impacts in the topics of air quality, biology, geology/soils, noise, and traffic/transportation. The adopted Mitigated Negative Declaration includes mitigation measures, which reduce the identified impacts to less-than-significant levels. These mitigation measures have been maintained as conditions of approval for the project. Implementation of these mitigation measures is ongoing and will be completed upon completion of the project.

CEQA Guideline 15162 states that no subsequent analysis is required unless the lead agency determines that: 1) substantial changes to the project are proposed; 2) substantial changes in the circumstances of the project have occurred potentially resulting in new or increased severity of previously identified impacts; or 3) new information of substantial importance that was not known and could not have been known when the prior environmental determination was made.

The proposed Planned District Major Amendment does not change the findings of the prior environmental analysis in that it would result in identical use and development of the site. No substantial changes in the circumstances for impact analysis have occurred nor has any new information that could not have been known when the prior analysis was completed been discovered. The proposed changes are

consistent with the adopted Mitigated Negative Declaration and Mitigation Monitoring Plan and no further analysis is required.

**ENCLOSURES:**

- [Draft ordinance](#)
- [Exhibit “A” - Site Plan, Elevations, Floor Plan, Landscape Plans, Engineering Plans](#)
- [Exhibit “B” - Findings and Conditions of Approval](#)
- [Informational 1 - Color and Material Rendering](#)
- [Informational 2 - Location Maps](#)
- [Informational 3 - Draft Minutes](#)

**RECOMMENDATION:**

1. Hold public hearing.
2. Find that, consistent with CEQA Guidelines 15162, no significant changes to the project or site circumstances have occurred, nor has new information of substantial importance been discovered, and the previously adopted Mitigated Negative Declaration and Mitigation Monitoring Plan are still valid and no further environmental analysis is required, and find this action reflects the independent judgment of the City of Fremont.
3. Find Planned District Major Amendment is in conformance with the relevant provisions contained in the City's General Plan. These provisions include the designations, goals, objectives and policies set forth in the General Plan's Land Use and Housing Chapters as enumerated within the staff report.
4. Find the Precise Plans for the project as depicted in Exhibit “A” (precise site plan, floor plans, elevations, engineering plans and landscape plans), fulfills the applicable requirements set forth in the Fremont Municipal Code.
5. Waive reading and introduce an ordinance approving the Precise Plans for Buildings 17-19 as shown on Exhibit “A” More specifically, sheets A1.12-1.18, L2.5-2.6, L2.11-2.12 and C-0 through C-3 consisting of precise site plan, floor plans, elevations, engineering plans and landscape plans for Planned District Major Amendment to P-2005-80 be approved, based upon the findings contained in this report and subject to the conditions of approval set forth in Exhibit "B".
6. Direct staff to prepare and the City Clerk to publish a summary of the ordinance.

**\*2.8 PARTICIPATION IN COUNTY HOME PROGRAM**  
**Request for Continued Participation in the Alameda County HOME Investment Partnership Act (HOME) Program Consortium**

**Contact Person:**

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**Executive Summary:** The Alameda County Home Investment Partnership Act (HOME) Program Consortium was created in 1990 to provide equitable distribution of funding to local cities for affordable housing programs. At this time, staff is asking the Council to consider continued participation in the Alameda County HOME Program Consortium of contiguous jurisdictions for FYs 2012/13, 2013/14, and 2014/15 for the purpose of securing federal HOME funding. Staff recommends that the City Council adopt a resolution approving participation in the Alameda County HOME Program Consortium and authorize the City Manager to execute participation agreement between the City of Fremont and Alameda County, and to take all actions necessary for participation in the Consortium.

**BACKGROUND:** Title II of the Cranston-Gonzales National Affordable Housing Act of 1990 created the HOME Program to provide flexible funding to states and local governments for affordable housing programs for lower income households. In general, HOME funds can be used to acquire, rehabilitate, finance, and construct affordable housing, as well as provide tenant-based rental assistance.

Since 1991, the City of Fremont has participated in the Alameda County HOME Program Consortium. Participation has historically been renewed for three-year periods. On July 26, 2011, the City Council approved Fremont's participation in the Consortium for FY 2011/12, which will end on September 30, 2012. Members of the Consortium include the cities of Fremont, Union City, Hayward, San Leandro, Alameda, Livermore, Pleasanton, and Alameda County, representing the unincorporated portions of the county and the cities of Albany, Dublin, Emeryville, Newark and Piedmont. The City now has the opportunity to continue participation in the HOME Program for federal fiscal years 2012/13, 2013/14, and 2014/15. The Alameda County HOME Consortium staff is requesting advance approval from each participating jurisdiction to ensure continued participation in the Consortium.

**HOME Fund uses:** The historic use of HOME funds in the City of Fremont is illustrated in Table 1, below. These allocations have included project types such as very low income family transitional housing, units for those with mental disabilities, and expenditures for tenant-based rental assistance programs like the Housing Scholarship Program and for Project Independence youth "emancipated or aged out" of the foster care system.

**Table 1 Historic Uses of HOME funds**

<b>Project Allocation Year</b>	<b>Projects &amp; Programs</b>	<b>HOME funds</b>	<b>Number of Units</b>	<b>Population Served</b>
1992	Century Village Apartments	\$731,957	75 units	Very low and low income families
1993	Pacific Grove Apartments	\$323,895	20 units	Extremely low income persons with mental disabilities
1994	Park Vista Apartments	\$300,000	60 units	Very low and low income families
1995	Bridge Way Apartments	\$480,000	8 units	Very low income homeless families
1998	Adams Avenue	\$100,000	3 homes	Very low income families
2001	Housing Scholarship Program	\$350,953	10 rental subsidies	Extremely low income families enrolled in vocational training
2002	Project Independence I	\$150,871	Provide up to 20 rental subsidies	Extremely low income adults emancipated or aged out of the foster care system and enrolled in vocational training
2003	Lincoln Oaks Apartments	\$693,650	11 units	Extremely low income developmentally disabled adults
2004	Irvington Terrace Apartments	\$600,000	100 units	Extremely low and low income families
2005	Baywood Apartments	\$400,000	60 units	Very low and low income families
2006	Project Independence II	\$207,409	Provide up to 45 rental subsidies	Extremely low income young adults emancipated or aged out of the foster care system
2007	Eden Peralta Senior Housing	\$1,400,000	98 units	Extremely low and very low income seniors
2009	Main Street Village	\$1,059,991	63 units	Extremely low and very low income families
2011	Project Independence III	\$340,000	Provide up to 60 rental subsidies	Extremely low income young adults emancipated or aged out of the foster care system



**DISCUSSION/ANALYSIS:** To be eligible to receive federal HOME funds, Fremont must continue its participation in the Alameda County HOME Program Consortium of contiguous jurisdictions. Under federal law, Fremont cannot receive a separate entitlement grant because it does not meet the minimum threshold, which is based on the percentage of population at the poverty level. It is anticipated that all cities currently participating in the Alameda County HOME Program Consortium will continue to participate for the next three-year period. Involvement in the Consortium does not commit the City to any particular project or activity, and all projects undertaken in the City must have prior approval of the City Council. If the Council approves participation in the Consortium, then based on prior allocations, Fremont could receive approximately \$500,000 per year; however, HOME fund allocations are dependant on the HOME program appropriation levels established by Congress.

Under federal regulations, participating jurisdictions may allocate up to 10% of HOME funds for program administration. Participating jurisdictions in the Alameda County HOME Program Consortium pay the County an administrative fee of 5% of the jurisdiction's share of the HOME funds; the remaining 5% can be used by each jurisdiction to pay for program administration.

**FISCAL IMPACT:** There is no match requirement for this funding, nor is there any impact on the General Fund.

**ENVIRONMENTAL REVIEW:** HOME-funded projects are subject to environmental review under the National Environmental Policy Act of 1969 (NEPA).

**ENCLOSURE:** [Draft Resolution](#)

**RECOMMENDATION:** Adopt a resolution:

1. Approving participation in the Alameda County HOME Program Consortium for the next three (3) federal Fiscal Years 2012/13, 2013/14, and 2014/15 for the purpose of securing federal HOME funds; and
2. Authorizing the City Manager or his designee to execute the participation agreement between the City and Alameda County and to take all actions necessary for participation in the Consortium.

## **\*2.9 SENIOR MOBILE MENTAL HEALTH TEAM PROJECT**

### **Authorization to Contract with Alameda County Behavioral Health Care Services for a Mobile Integrated Assessment and Treatment Team for Seniors**

#### **Contact Person:**

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**Executive Summary:** Staff is recommending the City Council authorize the City Manager to enter into a contract in the amount of \$422,799 with Alameda County Behavioral Health Care Services for the Senior Mobile Mental Health Team Program for Fiscal Year 2011/12.

**BACKGROUND:** In November 2004, California voters passed Proposition 63, the Mental Health Services Act (MHSA), which has been designed to expand and transform California's county mental health service system. MHSA provides supplemental funding for mental health services by imposing an additional one percent tax on individual taxable incomes of \$1 million or more.

MHSA also stipulates that the California Department of Mental Health (CDMH) must contract with County mental health departments to develop and implement MHSA-funded programs. In an effort to submit a comprehensive plan for the use of the MHSA funding to the CDMH, Alameda County Behavioral Health Care Services (ACBHCS) implemented a county-wide planning process that included planning panels for different mental health service target populations. City staff actively participated in the planning panel for older adults and chaired the subcommittee for services targeting southern Alameda County. The older adults planning panel identified a need for geriatric mental health services targeted at seniors isolated in their homes and unable to access services due to transportation and physical/mental health barriers.

In December 2005, the County successfully submitted a MHSA funding plan to CDMH which included a proposal for mobile mental health services for seniors in southern Alameda County. The County then selected the City's Human Services Department as a sole source provider, in part due to the fact that the City is the largest and most comprehensive purveyor of senior services in the Tri-City area. The Human Services Department has been operating this program since 2008.

#### **DISCUSSION/ANALYSIS:**

**Program Goal:** The goal of the Mobile Mental Health Team is to provide geriatric mental health capacity in southern Alameda County and thereby improve the mental health of seniors who are 60 years and older, with serious mental illness who are 1) isolated and therefore unable to access clinic services, and 2) unable to manage independence due to physical/mental disabilities. These seniors are often at risk of institutionalization, nursing home care, hospitalization, repeated 911 calls, and emergency room visits.

**Program Design:** The Mobile Mental Health Team will provide mental health services to a minimum of 55 clients in their homes in order to improve their ability to live safely in the community. The Mobile Mental Health Team is a multi-disciplinary team consisting of a part-time psychiatrist, a part-time physician's assistant, a full-time licensed counselor and a full-time clinical supervisor. The team is supported by a full-time administrative assistant. The clinical supervisor will be the project manager. The team will visit isolated seniors in their own homes to diagnose their mental status and assess their need for mental health services. The treatment team will work with the senior, and where possible the family, to develop a treatment plan that may include prescribing and monitoring psychotropic medications, providing individual counseling, and referring seniors to other resources as needed. Referrals may be made to other services such as the City's senior case management program, Adult Protective Services, home delivered meals, and inpatient hospitalization as needed.

**FISCAL IMPACT:** The Mobile Integrated Assessment Treatment Team's program operation costs are supported fully by this contract with the Alameda County Behavioral Health Care Services.

**ENVIRONMENTAL REVIEW:** None

**ENCLOSURE:** None.

**RECOMMENDATION:** Authorize the City Manager to enter into a contract with Alameda County Behavioral Health Care Services to provide services through the Mobile Integrated Assessment and Treatment Team for Seniors for the period of July 1, 2011 through June 30, 2012.

**\*2.10 APPROVAL AND AUTHORIZATION TO EXECUTE AN AGENCY TRANSFER PAYMENT AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY AND THE CITY OF FREMONT**

**Authorization for the City Manager to Enter into an Agency Transfer Payment Agreement between the Redevelopment Agency and the City of Fremont to Allow for the Payment of Certain Required Remittance Payments Pursuant to Part 1.9 of the Redevelopment Law**

**Contact Person:**

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**Executive Summary:** As a result of the recent fundamental restructuring of redevelopment in California, the City, on behalf of the Redevelopment Agency, will be required to make annual payments to local schools and other entities. To do so, the law allows the City and the Agency to enter into an agreement whereby the Agency transfers a portion of its tax increment revenue to the City for the City's use in making these required payments. Staff requests authorization from the City Council to execute an Agency Transfer Payment Agreement between the Redevelopment Agency and the City of Fremont for the purpose of transferring funds to the City to make the required payments.

**BACKGROUND:** ABx1 26 (the "Dissolution Act") and ABx1 27 (the "Voluntary Program Act") (together, the "Redevelopment Restructuring Acts"), became effective in late June 2011. The Dissolution Act first immediately suspended all new redevelopment activities and incurrence of indebtedness, and purported to dissolve all redevelopment agencies, effective October 1, 2011. The Voluntary Program Act then allowed redevelopment agencies to avoid dissolution under the Dissolution Act if their sponsoring community opted in to a "voluntary alternative redevelopment program" (the "Voluntary Program") that requires annual contributions to local schools and special districts. On July 19, 2011, the City enacted the Continuation, or "Opt-in," Ordinance to participate in the Voluntary Program and exempt the Agency from the requirements of the Dissolution Act.

The California Redevelopment Association, the League of California Cities, and others challenged the validity and constitutionality of the Redevelopment Restructuring Acts in mid-July 2011. On August 11, 2011, the California Supreme Court agreed to review the matter and stayed the effectiveness of much of the Redevelopment Restructuring Acts pending resolution of this litigation. The Court's Stay postpones the effectiveness of the Voluntary Program Act in its entirety. According to the Stay, the Court anticipates making a final decision on the Redevelopment Restructuring Acts by January 15, 2012. However, the Stay left most of the Dissolution Act in effect. Thus, until the Court makes a final decision on the Redevelopment Restructuring Acts, redevelopment agencies are prohibited from activities except in connection with existing enforceable obligations.

**DISCUSSION/ANALYSIS:** Although currently suspended by the Court Stay, the Voluntary Program Act, if in effect, would require significant remittance payments from the sponsoring community of any agency wishing to continue its existence. On July 19, 2011, prior to the Court's issuance of the Stay, the

City Council enacted a Continuation Ordinance to keep the Agency in existence and to participate in the Voluntary Program. Section 34194.2 of the Voluntary Program Act provides that the City and the Agency can enter into an agreement whereby the Agency transfers a portion of its tax increment to the City for the City's use in making the remittance payments required under the Voluntary Program Act (the "Agency Transfer Payment Agreement"). The Continuation Ordinance expressly anticipates the execution of an Agency Transfer Payment Agreement as the only funding source available to the City to pay the annual remittance payments.

The Stay results in an untenable position for the City and the Agency. The Agency is generally prohibited from engaging in new activities (because the Stay did not affect the Dissolution Act), but the City and the Agency both need to conduct financial planning to assure timely funding by the City of the community remittance payments under the Voluntary Program Act and the commitment made by the City in the Continuation Ordinance should the Voluntary Program survive. Likewise, in order to be sure that it can draw the necessary tax increment revenues for the coming year to provide the City with funds for the initial remittance payment, the Agency needs to be able to reflect that obligation on its upcoming October 1, 2011 Statement of Indebtedness. For these reasons, it is essential that the City and the Agency be able to approve and execute the Agency Transfer Payment Agreement as expeditiously as possible in light of the Stay.

Ideally, any final judgment by the Court would address this problem caused by the Stay by providing communities like the City and its Agency, that desire to participate in the Voluntary Program and that enacted the Continuation Ordinance prior to the Stay, additional time to approve the necessary Transfer Payment Agreement after the Stay is lifted and prior to the date the initial community remittance payment is due (should the Court find the Redevelopment Restructuring Acts to be constitutional). However, there is no guarantee that the Court's final decision will address this predicament that the City, the Agency, and other communities/redevelopment agencies throughout the State now face.

In order for the City and the Agency to be able to perform the necessary financial planning to comply with the Voluntary Program Act and the Continuation Ordinance's commitment to make the required annual community remittance payments in light of the Stay, staff, in consultation with the City Attorney and Agency special counsel, has determined that the most prudent course of action is for the Agency Transfer Payment Agreement to be conditionally authorized and executed by the City and the Agency at this time. The terms of such Agency Transfer Payment Agreement will only become operative upon the Court lifting the Stay, and ultimately deciding that the Redevelopment Restructuring Acts are constitutional.

Consequently, the proposed Agency Transfer Payment Agreement that is before the City Council indicates that it immediately binds the two parties, but that their respective obligations to perform under the agreement will become operative only if the Court lifts the Stay and determines that the Redevelopment Restructuring Acts are constitutional.

Once operative, the proposed Agency Transfer Payment Agreement calls for the Agency annually to transfer to the City the necessary funds, using tax increment and/or other amounts available to the Agency, for the City, in turn, to make the annual community remittance payments required to continue the Agency's existence and participation in the Voluntary Program. The proposed Agency Transfer Payment Agreement expressly indicates that the City will make the annual remittance payments

exclusively with funds received from the Agency and that the City is not obligated to use any general funds or other revenues available to the City for such purpose.

**FISCAL IMPACT:** The Department of Finance (the "DOF") has calculated a community remittance payment for Fremont for the current fiscal year (2011/12) of \$8,997,931. However, due to an error in the DOF's calculation of the remittance fee, Agency staff believes the DOF calculation to be too high and is disputing this amount. If the appeal is successful, the Agency would likely owe \$8,445,657. For the 2012/13 fiscal year, the DOF has calculated a payment of \$2,136,858, which is an estimate only because payment amounts for succeeding years will be a function of future tax increment revenues as well as any new debt issued by the Agency, as yet undetermined. There is no impact on City resources because these payments will be funded by transfers in from the Agency.

**ENVIRONMENTAL REVIEW:** Approval and execution of the proposed Agency Transfer Payment are exempt activities under the California Environmental Quality Act ("CEQA") and do not require CEQA review. Pursuant to State CEQA Guidelines, Section 15378(b)(4), these approvals and actions do not constitute a "project" for CEQA purposes, but instead consist of the creation and continuation of a governmental funding mechanism for potential future projects and programs, and they do not commit funds to any specific project or program. It is recommended that the Agency Executive Director and City Manager cause the filing of the appropriate CEQA Notice of Exemption with the County Clerk for such approvals and actions in accordance with the CEQA guidelines.

**ENCLOSURES:**

- [Draft Resolution](#)
- [Agency Transfer Payment Agreement](#)

**RECOMMENDATION:** Approve a resolution and authorize the City Manager to enter into an Agency Transfer Payment Agreement between the Redevelopment Agency and the City of Fremont to allow for the payment of certain required remittance payments pursuant to Part 1.9 of the Redevelopment Law.

**\*2.11 JOINT POWERS AGREEMENT WITH NEW HAVEN UNIFIED SCHOOL DISTRICT**  
**Approve a Joint Powers Agreement with New Haven Unified School District for the**  
**Provision of Mental Health Services**

**Contact Person:**

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**Executive Summary:** The purpose of this report is to recommend that the City enter into an ongoing joint powers agreement with New Haven Unified School District (NHUSD) that will enable the Youth and Family Services Division of the Human Services Department to provide mental health services to NHUSD on school district property while retaining the legal protections available when providing services within the City's jurisdiction.

**BACKGROUND:** The Youth and Family Services (YFS) Division of the Human Services Department has provided a variety of mental health services to local school districts for more than fifteen years. In May 2011, NHUSD asked YFS to partner with it on an Early Mental Health Initiative Grant proposal that NHUSD was submitting to the California Department of Mental Health (CDMH). NHUSD proposed to implement a Primary Intervention Program (PIP) for K-3 students who are referred by their teachers. In the PIP model, children having adjustment difficulties receive early screening, intervention and social skills development through one-to-one, non-directive play experiences with a trained Child Aide. Through these activities, children gain confidence in expressing their feelings and work out their own problems related to school adjustment, adult and peer relations and social behavior.

CDMH has notified NHUSD that it intends to award three years of funding to support the implementation of its Primary Intervention Program. YFS's role will be to provide four part-time paraprofessional Child Aides, as well as a part-time Counselor to provide supervision and consultation for these Child Aides, and assist children with mental health needs that exceed the scope of the PIP.

**DISCUSSION/ANALYSIS:** The Joint Powers Agreement is made pursuant to State law and is not a separate legal entity. Rather, the Agreement allows City staff to provide services on school district property while retaining the legal protections available when providing services within the City's jurisdiction. It has been flexibly structured so that new task orders may be executed as needed, such as on an annual basis, because service needs, costs and funding availability change each school year.

**FISCAL IMPACT:** Subsequent task orders under the Joint Powers Agreement will cover all of the costs associated with providing the services outlined above, including staffing costs and City administrative overhead costs.

**ENVIRONMENTAL REVIEW:** NA

**ENCLOSURE:** None.

**RECOMMENDATION:** Authorize the City Manager or designee to execute a joint powers agreement with the New Haven Unified School District for the provision of mental health services.



## 5.1 ANIMAL FANCIER PERMIT APPEAL TO COUNCIL

### Appeal To the City Council From Denial Of An Application For An Animal Fancier Permit To Keep Two Hives of Bees and Six Chickens At 37017 Contra Costa Avenue

#### Contact Person:

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**Executive Summary:** This is an appeal of a decision by the Animal Services Superintendent to deny an Animal Fanciers Permit to keep two beehives and six chickens at a residential property located at 37017 Contra Costa Avenue. The principle issue on appeal is whether or not the keeping of the bees will endanger the health or safety of persons in the immediate vicinity and whether or not the keeping of bees would otherwise constitute a nuisance. Staff believes, based upon the negative experiences of an immediate neighbor with bees kept in the past at 37017 Contra Costa Avenue and the sensitivity of that neighbor's family and pet to bee stings, that the keeping of bees at the property would constitute a threat to health and safety and a nuisance. The appellant does not believe that keeping bees on his property is a threat to his neighbor or a nuisance.

**BACKGROUND:** Under FMC Section 3-5803, a person must have an animal fancier's permit to keep bees. Subsection (1)(d) limits the number of beehives that may be permitted on an 8,000 sq ft lot. Section 3-5803 provides in relevant part:

Chickens, ducks, geese, rabbits, pigeons, doves and bees may be kept for noncommercial recreational, educational or food source use on a lot used primarily for residential purposes, provided that an animal fancier's permit has been obtained from the animal services supervisor.

(1) The number of such animals allowed shall be based on lot area (except as provided for in section 3-5804 of this chapter) as follows:

\*\*\*

(d) Lots with an area of eight thousand square feet or more: Not more than six adult rabbits or six chickens, roosters not permitted, or one goose or two beehives or a combination of twenty pigeons and/or doves.

\*\*\*

The appellant's property at 37017 Contra Costa Avenue is a single-story family dwelling with a lot size of approximately 8,437 square feet. Based on the lot size, up to two beehives and six chickens could be allowed on the property with an Animal Fancier Permit.

On August 16, 2010, the Fremont Animal Services Unit received an online complaint concerning bees at 37017 Contra Costa Avenue. The report indicated that the resident had two beehives in the backyard.

The reporting party indicated that family members had been attacked and stung by the bees on multiple occasions and that they feared for the safety of a family member who is extremely allergic to bee stings. (See Exhibit S for the reporting party's statement.) A review of Animal Services records indicated that the residence did not have an Animal Fancier Permit to keep bees.

On August 18, 2010, an Animal Services officer conducted a follow-up investigation at 37071 Contra Costa Avenue. The officer spoke with the homeowner and conducted an on-site inspection. Two honey beehives and four chickens were found in the backyard of the residence. The beehives were located along the fence line on the west side of the lot. The officer provided the homeowner with information on how to obtain an Animal Fancier Permit for both the bees and chickens. A violation warning notice was issued for violation of FMC Section 3-5803 (Permit Required).

On August 26, 2010, an Animal Fancier Permit application was received from the homeowner, Russel Shaffer, for two beehives and four chickens. As part of the application process, immediate neighbors were advised via mail with an opportunity to comment. This included the residents at 4545 Santa Cruz Court, 4510 Alameda Drive, 4471 Alameda Drive, and 37059 Contra Costa Court. Two of the residents responded and cited incidents of bee stings, safety concerns, and nuisance issues. On September 23, 2010, an Animal Permit Status Form was mailed to Mr. Shaffer indicating his application had been denied under FMC Sections 3-5902(1) and 3-5902(2) (Approval of Application). Mr. Shaffer did not appeal the denial of this first permit application.

On October 6, 2010, an Animal Services officer inspected 37071 Contra Costa Avenue and found that the beehives and chickens had not been removed. Mr. Shaffer indicated that he would not remove the beehives or chickens and would challenge the permit denial. The officer issued Mr. Shaffer an Administrative Citation (#187037) for violation of FMC Sections 3-5801 (More than 2 Chickens) and 3-5803 (Beehives on Property). On October 7, 2010, a letter from Mr. Shaffer was received by the Animal Services Unit requesting an Administrative Hearing on the citation.

On November 19, 2010, Animal Services issued Mr. Shaffer a second Administrative Citation (#187042) under FMC Section 3-5803 (Beehives on Property) for failure to remove the beehives and chickens.

On December 24, 2010, Animal Services issued a third Administrative Citation (#187049) to Mr. Shaffer under FMC Section 3-5803 (Beehives on Property) for failing to remove the beehives and chickens.

On January 12, 2011, an Administrative Hearing for the first Administrative Citation (#187037) was conducted. The Hearing Officer denied Mr. Shaffer's request for citation dismissal. The Hearing Officer found that Mr. Shaffer continued to be in violation and declared his refusal to remove the beehives and chickens to be unlawful and a public nuisance, and upheld the fine. Mr. Shaffer subsequently appealed the hearing officer's determination to the Superior Court of California, County of Alameda. On March 4, 2011, the Superior Court found Mr. Shaffer liable the first Administrative Citation (#187037) on and ordered him to pay the fine. Staff from the City Attorney's Office represented the City at the hearing.

On March 24, 2011, the Animal Services Superintendent and the assigned Animal Services officer met with Mr. Shaffer at his residence and confirmed that the beehives had been removed. However, they found that the chickens had not been removed.

On April 6, 2011, the Animal Services Unit received a second application for an Animal Fancier Permit from Mr. Shaffer to allow two honey beehives and six chickens at his residence on 37071 Contra Costa Avenue. As part of the application process, immediate neighbors were again advised via mail with an opportunity to comment. This included the residents at 4545 Santa Cruz Court, 4510 Alameda Drive, 4471 Alameda Drive, and 37059 Contra Costa Court. One of the residents responded and cited incidents of bee stings, safety concerns, and nuisance issues.

On May 12, 2011, the Animal Services Superintendent met with Mr. Shaffer and delivered an Animal Permit Status form denial letter citing FMC Section 3-5902(2) as the cause for denial. Mr. Shaffer now appeals the denial of his second Animal Fancier Permit applicant to the City Council

### **DISCUSSION/ANALYSIS:**

FMC Section 3-5902 establishes the criteria for granting or denying an Animal Fancier's Permit. In order to grant the permit, the following findings must be made:

- (1) The keeping of the animal at the location specified in the application will not violate any ordinance or other regulation of this city or any law of the state;
- (2) The keeping and maintenance of the animal will not endanger the peace, health or safety of persons in the immediate vicinity or in the city as a whole and will not constitute a nuisance;
- (3) The premises and housing where the animal is to be kept are in clean and sanitary condition, and the animal will not be subject to suffering, neglect, cruelty or abuse;
- (4) The applicant has corrected any deficiencies which may have caused a previous permit to be revoked, suspended or denied.

The animal services superintendent denied the permit because he could not make finding (2). Specifically, he determined that allowing beehives at the residence would be a health risk for the immediate neighbors residing at 4510 Alameda Drive and a nuisance. The homeowners at that residence reported that during the time that Mr. Shaffer was keeping bees without a permit, on several occasions they and their family pets had been swarmed by bees from Mr. Shaffer's residence resulting in several bee stings. The last incident occurred on August 14, 2010, when the homeowner was stung several times on his arm and back. The family dog has also had to be medical treated for bee stings. The homeowner now keeps emergency medication at their residence for the dog. The homeowner also reported that bees gathered on their lawn when it was wet and that dead or dying bees had to be cleaned from their patio and side yard of their residence. Because of this, the homeowners cannot let their grandchildren play in the yard. In addition, the homeowner reported that their daughter's fiancé is highly allergic to bee stings and could not go into their backyard.

In his appeal, Mr. Shaffer asserts that the bees do not create a nuisance for his neighbors and his bees have been used as an educational tool for students. Mr. Shaffer also asserts that bees are not animals and should not require an Animal Fancier Permit. With regard to Mr. Shaffer's first assertion, staff believes there are sufficient facts for the City Council to determine that the keeping of bees on Mr. Shaffer's property would be a nuisance and health risk to the immediate neighbor. With regard to the second assertion, the municipal code specifically requires an animal fancier permit to keep bees and that the appellant's focus on the word "animal" in the permit title is misplaced.

**FISCAL IMPACT:** Not applicable

**ENVIRONMENTAL REVIEW:** Not applicable

**ENCLOSURES:**

- [Exhibit A – Receipt of Appeal Request](#)
- [Exhibit B – Online Complaint](#)
- [Exhibit C – FPD Form #1195](#)
- [Exhibit D – GPS Map of 37071 Contra Costa Avenue](#)
- [Exhibit E – Residential Description of 37071 Contra Costa Avenue](#)
- [Exhibit F – Animal Fancier Application \(8/26/10\)](#)
- [Exhibit G – Objection Response – 4510 Alameda Drive](#)
- [Exhibit H – Animal Permit Inspection Form \(8/26/10\)](#)
- [Exhibit I – Objection Response – 4545 Santa Cruz Court](#)
- [Exhibit J – Violation Warning \(8/18/10\)](#)
- [Exhibit K – Denial Form/Letter \(9/23/10\)](#)
- [Exhibit L – Municipal Code Violation #187037](#)
- [Exhibit M – Municipal Code Violation #187042](#)
- [Exhibit N – Municipal Code Violation # 187049](#)
- [Exhibit O – Administrative Hearing Finding](#)
- [Exhibit P – Letter from Deputy City Attorney Rennie](#)
- [Exhibit Q – Animal Fancier Application \(04/11\)](#)
- [Exhibit R – Denial Form/Letter \(5/12/11\)](#)
- [Exhibit S – Neighbor's Statement](#)

**RECOMMENDATION:** Staff recommends Council deny the appeal and uphold the denial of the Animal Fancier Permit by the Animal Services Superintendent to keep beehives at 37017 Contra Costa Avenue.

## 5.2 AFFORDABLE HOUSING ORDINANCE ZONING TEXT AMENDMENT

### Public Hearing (Published Notice; Display Ad) to Consider Planning Commission Recommendation and Introduce an Ordinance to Amend Fremont Municipal Code Title VIII, Chapter 2, Article 21.7, Affordable Housing

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**Executive Summary:** In June 2011 the City Council initiated a zoning text amendment (ZTA) to the City's Affordable Housing Ordinance and directed staff to consider options for allowing greater flexibility in the Ordinance's timing requirements as well as modifications to some of the Ordinance's implementing procedures. Generally, the proposed ZTA clarifies existing terms and standards for alternative affordable housing plans, and restructures provisions for processing and implementing affordable housing plans. Staff recommends modifying timing standards to allow consideration of affordable housing plan amendments on projects where building permits have already been pulled if the amendment application was submitted before October 14, 2011. For all other projects, staff recommends that affordable housing plan amendments would have to be applied for and approved prior to issuance of the first building permit. Staff also recommends changes to allow affordable housing plan milestones to be secured through payment of in-lieu fees. The proposed ZTA would expand opportunities for using alternative (d) of the Ordinance (purchase of existing off-site market rate units to meet affordability requirements) by modifying certain substantive and procedural requirements. The ZTA also clarifies that the City's policy goals when considering an alternative (d) proposal include targeting low income household affordability for ownership units, a preference for three-bedroom units, and limiting affordable housing in common ownership developments to no more than 15% of the overall units. Staff and the Planning Commission recommend adoption of the ZTA to modify provisions of the Affordable Housing Ordinance.

**BACKGROUND:** In 2002, the City adopted an Inclusionary Housing Ordinance as a strategy to increase the availability of affordable housing in the community. The ordinance required new developments of seven units or more to set aside 15% of the units for moderate-income buyers. The ordinance included provisions allowing developers to pay an in-lieu fee in very limited circumstances, but for the most part the ordinance resulted in the creation of a stock of for-sale units targeted to moderate-income buyers.

In 2008, staff convened a stakeholder group of housing advocates, market-rate developers, and others to consider changes to the Inclusionary Housing Ordinance. Interests expressed by the stakeholder group and by the Council included:

- preserving and expanding the stock of affordable housing;
- incentivizing developers to disperse the benefits of the ordinance more broadly and to those at low, very low, and extremely low income levels;

- generating funds that could be aggregated to develop affordable rental projects;
- generating funds that could be used for supportive services; and
- providing flexibility to developers.

In June 2010, Council adopted a revised ordinance, and renamed it the Affordable Housing Ordinance. The Ordinance retains the basic requirement for 15% of on-site for-sale units to be set aside for affordable housing, but it also allows payment of an in-lieu fee in place of constructing on-site units. Because of certain legal constraints, market-rate rental projects that are constructed without any City assistance are required to pay an impact fee (“Affordable Housing Impact Fee”) rather than construct units on site. These revisions meet the City’s interest in generating funds that can be aggregated to support affordable rental projects and to pay for supportive services. The revised Ordinance requires developers to elect to construct the units or pay the in-lieu fee prior to issuance of the first building permit for the project. Payment of in-lieu fees and affordable housing impact fees can be deferred within certain timeframes consistent with applicable City policies allowing the payment of fees at building final, certificate of occupancy of a building, or 18 months after issuance of a building permit, whichever occurs first.

The revised Ordinance also gives developers the option of requesting an alternative Affordable Housing Plan that would allow one of several alternatives to on-site construction or payment of the in-lieu fee. These alternatives include provision of (a) on-site rental units; (b) off-site construction; (c) property dedication; (d) purchase of existing market-rate units; or (e) preservation of affordable units at risk of loss.

In the year since the revised Ordinance was adopted, staff and the development community identified certain aspects of the Ordinance that were difficult to implement or that did not provide adequate direction. In addition, there was some confusion as to how the revised Ordinance should be applied to projects which had been approved prior to its adoption in June 2010, but which had not yet been built. As a result, in June 2011, the City Council, with the Planning Commission’s recommendation, initiated a ZTA to the Affordable Housing Ordinance to consider modifications to provide greater flexibility in implementation.

The Planning Commission reviewed this proposed ZTA at its August 25, 2011 meeting. One member of the public spoke representing Santa Clara Development and commented on the standards and guidelines, noting that their soon to be submitted amendment application would not completely match the provisions of the proposed revisions. Planning Commission review and deliberation focused on the flexibility of the affordable housing plans, with an expressed concern that changes should allow consideration of “out of the box” plans, and on the direction by City Council for timing of permits through certificate of occupancy. Ultimately the Planning Commission voted 7-0 to recommend approval of the draft ordinance, qualified by a recommendation to change proposed timing requirements under alternative (d), which will be explained in detail below. Additionally, the Planning Commission recommended that a more thorough explanation of the discretionary elements involved in reviewing affordable housing plans be covered in the staff report to the City Council (See *Affordable Housing Plan Summary* section below).

## DISCUSSION/ANALYSIS:

### Project Description

The complete text of the draft ZTA is found in Exhibit A to this report. A number of the modifications are formatting rather than substantive changes. The following is a summary of highlights of proposed substantive changes:

1. Add definition of moderate income household for rental units.
2. Revise definition of for-sale project to include interim rental of condominiums.
3. Clarify applicability of basic requirements for ownership and rental housing.
4. Clarify affordable housing standards for on-site units.
5. Restructure review, approval, and implementation process for affordable housing plans.
6. Change timing requirement to amend affordable housing plan for prior approved projects to October 14, 2011; delete conflicting language.
7. Clarify required content of an affordable housing plan and discretion for its review and approval.
8. Clarify requirement to record affordable housing agreements prior to development.
9. Clarify discretion for community development director to implement affordable housing plans.
10. Clarify Alternative (a) standard that affordable units be comparable to market-rate units.
11. Modify Alternative (d) to include individually owned units acquired through foreclosure or short sale.
12. Modify Alternative (d) to require a financial sustainability plan.
13. Modify Alternative (d) to identify preferences for low income households, three bedroom units, and limiting affordable off-site units in common interest developments to a maximum of 15% of the development.
14. Modify Alternative (d) to delete language for rental units.
15. Modify Alternative (d) performance requirements to provide that the approved existing off-site units must be made available for sale within 18 months of first building permit, or before the final inspection for occupancy of 50% of the units.
16. Modify Alternative (d) to require payment of in-lieu fees at time of building permit as financial security for performance.
17. Clarify that administration of impact and in lieu fees are governed by citywide fee policies.

### *Timing Requirements: Approval and Performance*

During the past year as staff began implementing the revised Ordinance, an issue was raised as to how and if it could be applied to developments that had been approved under the old inclusionary ordinance but were not yet built. One developer wanted to modify a project's affordable housing plan to utilize alternative (d) – purchase of existing off-site units – rather than provide moderate units in the new development. The developer applied to change the affordable plan, but staff was not able to process the application prior to the developer needing to pull building permits. The Ordinance precludes changing the plan once building permits have been issued. When initiating the ZTA, Council asked staff to consider ways to provide greater flexibility in timing requirements to amend plans.

The Ordinance was drafted to require developers to have a final affordable housing plan at time of building permit issuance to facilitate the City's interest in maintaining an effective, enforceable program that can be administered with relative efficiency. Staff continues to believe it is in the City's interest to

maintain this timing requirement. Nonetheless, staff recognizes that certain projects – those entitled but not yet built- were caught between the more restrictive requirements of the old ordinance and the timing requirements of the revised Ordinance, so were not able to take advantage of the different, more flexible alternatives provided for in the revised Ordinance. Accordingly, staff recommends modifying the Ordinance to provide that building permits may be issued for market-rate units in residential projects when a developer wants to amend the affordable housing plan so long as the application to amend the affordable housing plan was made prior to October 14, 2011. However, staff recommends maintaining the timing requirement for all future projects; affordable housing plan amendments would need to be approved prior to issuance of building permits. This approach acknowledges the peculiar circumstances of the “in-between” projects while maintaining needed administrative certainty. Staff believes developers of future projects will already have notice of the requirements and opportunity to implement or amend their plans during the due diligence and planning for a project up until the issuance of building permits for the project.

Another aspect of timing relates to when the affordable units have to be delivered, or be available for sale. Under the current Ordinance, a developer proceeding under alternative (d), provision of existing off-site units, must acquire title to the off-site units before any building permit can be issued for the market-rate units. Staff recommends a substantive change to this requirement.

The draft ZTA would change the timing requirement to require that all off-site units be acquired, rehabilitated and available for purchase within 18 months of issuance of any building permit for the market-rate units, or prior to final inspection for occupancy of 50% of the market-rate units, whichever occurs first. This replaces the current standard requiring acquisition of all units prior to issuance of the first building permit and to make units available for sale commensurate with market-rate unit occupancy. This approach alleviates difficulties in fulfilling requirements up front or in a piecemeal fashion. Staff has included a provision that requires payment of in-lieu fees as financial security to ensure implementation of the affordable housing plan.

The Planning Commission agreed with the proposed change to modify performance timing under alternative (d), but recommended that the new standard be changed to allow the time when existing off-site units provided under alternative (d) to be the latter of either construction of 50% of the market-rate project or 18 months from first building permit issuance, rather than the first building permit, as proposed by staff. Upon further analysis, staff respectfully disagrees with this recommendation, based upon implementation considerations. For example, using the latter of the two milestones approach does not work in instances where projects are completed prior to 18 months. It also raises questions as to what happens in instances where a project languishes and does not achieve the 50% completion threshold. In essence, at what point in time can the City utilize the in-lieu fee security deposit if a project never reaches either milestone? The Planning Commission’s intent was to create more flexibility for developers. Staff recommends that rather than changing the trigger point, a provision be added that allows the community development director to extend the timeframe for up to 6 months when he or she determines the developer is proceeding in good faith and close to having the off-site units available for sale.



#### *Alternative (d)*

Staff has a comprehensive recommendation on how to revise Alternative (d) to fit within the spectrum of the City's affordable housing programs. The basic requirement under the Ordinance for the provision of on-site income units meets a targeted need at one level of moderate income affordability, while receipt of both impact and in-lieu fees helps the City target affordable units at the very low and extremely low income levels. This leaves an opportunity for Alternative (d) to target ownership units at the low income level of affordability, a level that is not the focus of other City programs.

Alternative (d) has a number complicated issues related to its overall purpose and effectiveness that require refinement of standards and expectations to meet City goals. The proposed ZTA creates added flexibility by including short-sale homes as an eligible unit type for acquisition, but specifies that the units must be ownership housing units. It requires an affordable housing plan for off-site units to include a financial sustainability plan that addresses both homeowner cost concerns and City administrative burdens. The proposal will be reviewed on a case-by-case basis for each project. Furthermore, staff recommends that proposed Alternative (d) affordable housing plans target the low income affordability level (as opposed to very low), limit acquisition of units in existing unrestricted common interest developments to 15%, and that the majority of Alternative (d) units be three bedrooms. Staff believes this approach eases concerns about the viability of maintaining very low income households in ownership housing, provides greater certainty in financial planning, meets a needed deficiency of affordable housing stock oriented to families, and limits potential conflicts within existing developments. Consultation with the Housing Division led to interest in larger units rather than smaller ones when considering equity of bedroom counts and unit-types between large on-site new units and existing off-site units. Acquiring more small units was not desirable. The greatest program need in the eyes of the Housing Division was matching family needs with family sized units. At this time the preference for three bedroom units is not mandatory as staff recognizes there are limits on the availability of three bedroom units in the marketplace; however, it is very important to highlight the City's interest to developers up front as they prepare project specific affordable housing plans.

#### *Alternative (a)*

In regards to issues related to affordable housing rental units, Staff generally recommends minor housekeeping type changes to add definitions and clarify applicability of existing provisions. One exception is the staff recommendation to modify the standards of Alternative (a), "Provision of rental units." Staff recommends changing requirements related to unit type for consistency with other sections on the need to have comparable bedroom and unit types for affordable units with market rate units. The current Ordinance allows a trade off between number of bedrooms and number of units. After consultation with the Housing Division, it was determined that the trade off of smaller units for more units was not desirable. The greatest program need in the eyes of the Housing Division was matching family needs with family sized units.

#### *Affordable Housing Plan- Summary*

The proposed ZTA clarifies terminology and requirements and restates the chronology of implementation in Section 8-22174. The Ordinance requires the adoption/approval of a project specific "Affordable Housing Plan (AHP)." The AHP is subject to discretionary review concurrent with the first

project approval. Applicants are required to submit an AHP application concurrent with a new residential development proposal. The purpose of requiring the AHP with the project is to ensure that a developer is aware of the affordable housing obligations and that there is a plan in place to achieve the affordable housing requirements of the City. The AHP will specify if the project intends to meet the basic requirement or provide an alternative. Additionally, the AHP will address specified standards or guidelines applicable to the chosen alternative and identify up front any proposed phasing or performance milestones for review and approval with the project. The approving body will have discretion to consider project phasing, milestones, and conformity based upon the standards and guidelines within the affordable housing ordinance. An AHP must be consistent with the underlying ordinance; it cannot, for example, waive development standards or fees. The AHP can be amended by the approval body after its initial approval; however, with the exception of “in-between” projects discussed above, any amendment must be approved prior to issuance of any building permits for the market-rate units.

After the project and AHP are approved, the developer, before final map or building permit issuance, is required to enter an “Affordable Housing Agreement” to be recorded on the subject property which specifies the number, type, location, size and phasing of the affordable units, as well as regulatory requirements. The Affordable Housing Agreement may be approved by the community development director if he or she finds it is consistent with the Affordable Housing Plan. Developers that are paying the in-lieu fee rather than providing units do not need to enter an Affordable Housing Agreement.

### **General Plan Conformance**

The proposed ZTA principally relates to the Housing Element of the General Plan.

Housing Goal 3: Encourage the development of affordable and market-rate housing in order to meet the city’s assigned share of the regional housing need.

Policy 3.03 encourage the development of a diverse housing stock that provides a range of housing types (including family and larger sized units) and affordability levels through the community.

Analysis: The proposed ZTA continues to provide for a range of affordable housing types throughout the City while also encouraging market rate housing development. The combination of changes increases flexibility in meeting housing goals and delivers a variety of affordable housing types through basic requirements and alternative requirements.

### **Findings**

The proposed ZTA is in general conformance with the General Plan and specifically the Housing Element as described above. Additionally, the proposed ZTA is of public necessity, convenience, and general welfare requiring adoption of the amendment as it allows for the continued economic prosperity of the community through construction of housing and helps promote fulfillment of the housing needs of the community.

**FISCAL IMPACT: N/A**

**ENVIRONMENTAL REVIEW:** City Council adopted a Negative Declaration for the adoption of the Affordable Housing Ordinance in 2010. The environmental analysis found no potential for significant impacts on the physical environment related to provisions of the Affordable Housing Ordinance. The ordinance does not create additional housing demands or capacity for development beyond the current land use designation and zoning districts requirements of sites within the City. The proposed ZTA is consistent with the scope of the adopted Affordable Housing Ordinance and has no physical effect on the environment that differs from the original project analysis and approval. No subsequent environmental review required.

**ENCLOSURE:**

- [Draft ordinance](#)
- [Information Item 1: Draft Planning Commission Minutes August 25, 2011](#)

**RECOMMENDATION:**

1. Hold the Public Hearing.
2. Recommend the City Council find the proposed zoning text amendment consistent with the previously adopted negative declaration and that it requires no subsequent environmental review.
3. Recommend that City Council find the public necessity, convenience and general welfare require the adoption of this Zoning Text Amendment as described in the staff report findings section.
4. Waive full reading and introduce an ordinance amending Title VII, Chapter 2, Article 21.7 (Affordable Housing Ordinance).
5. Direct staff to prepare and the clerk to publish a summary of the ordinance.

## **6.1 Report Out from Closed Session of Any Final Action**

## 7.1 GENERAL PLAN EIR

### Presentation on the Draft Environmental Impact Report (DEIR) for the General Plan Update

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**Executive Summary:** The Draft Environmental Impact Report (DEIR) for the General Plan Update was released in July, 2011. (It can be found at <http://www.fremont.gov/GeneralPlanDraft> ). The DEIR analyzes the environmental impacts associated with new development that would be allowed under the Draft General Plan. The DEIR determines that, while many of the General Plan's impacts can be mitigated, a number cannot and are considered "significant and unavoidable." The majority of the significant and unavoidable impacts are related to future traffic conditions at specific intersections, although certain impacts related to cultural and historic resources, air quality, noise and vibration, and agricultural resources are also found to be significant and unavoidable.

The public comment period for the DEIR ended on August 19, 2011. The City received seven comments.

Staff will provide an informational presentation to familiarize Council with the contents of the DEIR, the impacts identified, and public comments received. Staff hopes to answer questions and receive feedback prior to Council's consideration of the Environmental Impact Report (EIR) for certification and the General Plan for adoption later this year.

**BACKGROUND:** The community vision encompassed in the Draft General Plan is that "Fremont will serve as a national model of how an auto-oriented suburb can evolve into a sustainable, strategically urban, modern city." The City's population is anticipated to grow to almost 260,000 by 2035, and the Plan calls for the majority of that growth to be focused in "strategically urban" locations near transit stations and along corridors such as Fremont Boulevard. The DEIR considers the environmental impacts from this growth.

**DISCUSSION/ANALYSIS:** The significant and unavoidable impacts identified in the DEIR are summarized below.

**Traffic:** Due in part to growth enabled by the Draft General Plan, but also due to growth of regional traffic through Fremont, the traffic model utilized in the DEIR predicts that by 2035 there will be 31 intersections in Fremont that will experience peak hour conditions failing to meet the City's vehicular standards for traffic speed and acceptable delay, even after incorporating feasible mitigation measures. The General Plan Mobility Element stresses improvements of alternative modes of transportation (e.g. bike, walk, transit) and does not prioritize roadway improvements as the means of reducing future congestion.

### **Air Quality:**

**Vehicle Miles Traveled (VMT)**-- The traffic model utilized in the DEIR estimates that VMT will increase in Fremont (and the rest of Alameda County) at a rate of 2% per year, while population will increase at a rate of 0.6%. One reason for the high level of increase in miles travelled is that job growth projections exceed 2% a year, resulting in a combined rate of population and job growth of approximately 1.3% annually. Additionally, the model was not refined to assume behavior change in travel preferences over the next 25 years or to isolate regional trips through Fremont. Together, these assumptions result in a conservatively high estimate of future vehicle miles travelled within the city and county. Based on the Bay Area Air Quality Management District's CEQA Guidelines, the estimated VMT increase is considered significant and unavoidable because it exceeds the population growth rate and would impact regional air quality.

**Construction-Related Emissions**—The DEIR includes mitigation measures to control particulate emissions during construction. However, the DEIR concludes that for some larger projects due to their overall size and construction schedule, the measures may not be sufficient to meet BAAQMD significance thresholds.

**Greenhouse Gases**—The DEIR concludes that growth allowed by the General Plan will meet the BAAQMD significance threshold of no more than 6.6 tons of greenhouse gases per service population (new residents and workers) through 2020. This is primarily due to the transit-oriented nature of future development that will reduce vehicle trips and will include basic residential green building requirements. Beyond 2020, BAAQMD has not established a significance threshold, so the default is to use the aggressive targets in AB32. Since AB32 compliance depends on future action by state and regional agencies to address emissions that are beyond the control of the City, and since there is no assurance these actions will occur, there is a potential significant impact of GHG emission for the long term horizon of the General Plan.

**Noise and Vibration**—The DEIR concludes that, despite a variety of mitigation measures that will be implemented on a project-by-project basis, the potential remains for noise and vibration impacts from increased traffic, long term construction projects, and location of incompatible land uses.

**Cultural Resources**— The City's building stock eligible for historic determinations increases substantially from approximately 20% to over 35% in the next decade. Due to high volume of structures and the impracticality of conducting historic determinations on all post-1955 structures, implementation of the General Plan may result in the loss of potential historic resources.

**Agricultural Land**—The General Plan retains longstanding land use plans for transit-oriented residential development of the Guardino parcel (Walnut and Guardino). This parcel is designated as "Prime Farmland" by the State due primarily to its soil characteristics. The Plan also retains the residential land use designation for city owned and privately owned vacant land at Palm Ave. and Interstate 680, land that is categorized as "Unique Farmland" by the State. Because the Plan would allow conversion of agriculturally land identified by the State as Prime or Unique, this is considered a significant and unavoidable impact. It should be noted that more refined evaluation of the importance of these farmlands could show that they do not actually meet the State definitions of Prime or Unique Farmland. Also, the potential mitigation of requiring agricultural easements could reduce this impact to less than significant.

## **PUBLIC COMMENTS**

The City received comment letters from the following organizations: the Bay Conservation and Development Commission (BCDC); the Bay Area Air Quality Management District (BAAQMD); Alameda County Water District (ACWD); the California Department of Conservation; the California Department of Transportation (CalTrans); the Valley Transportation Authority (VTA); and Cargill Salt (all letters enclosed). Of these, staff believes the letters from the Department of Conservation and BAAQMD raise the biggest policy issues.

**Dept. of Conservation:** The Department of Conservation commented that the City, as mitigation for the possible conversion of Prime and Unique Farmland, should review the option of requiring purchase of conservation easements through existing land trusts and conservancy programs. Staff agrees that offsite conservation easements could be a feasible mitigation for specific projects proposed on Prime and Unique Farmland, and proposes to modify the Final EIR accordingly.

**BAAQMD:** The BAAQMD commented that the DEIR did not provide enough specificity regarding the circumstances that would trigger project-specific modeling of potential health impacts from toxic air contaminants (TAC) and fine particulate matter. BAAQMD also recommends specific threshold criteria in lieu of the threshold articulated in the DEIR. Staff concurs that greater specificity is warranted for dispersion modeling and standards. Staff also concurs that the threshold proposed by BAAQMD of 10 increased cancer risks per one million population is appropriate in most circumstances. However, for infill residential projects on land already designated for residential, staff is proposing that the significance threshold be set at the EPA threshold of 100 increased cancer risks per one million, and that best management practices to reduce exposure risk be a condition of approval. For projects in locations with risks estimated between 10 and 100 increased cancer risks, this will reduce time spent during development review and provide certainty to both the developer and community about the level of risk mitigation that will be done with each project and remove the uncertainty of the CEQA process.

BAAQMD also commented that the City should require certain measures as conditions of approval for all future projects to reduce air pollution and greenhouse gas emissions. Suggested required measures include:

- Unbundle parking costs from rents and leases
- Other parking strategies including eliminating minimum requirements for new development and establishing a citywide pricing program for public parking
- Preferential parking for carpools and low emission vehicles in all new office and commercial construction projects
- Electric vehicle charging stations
- A time of sale Residential Energy Conservation Ordinance/Commercial Energy Conservation Ordinance (RECO/CECO)

The California Green Building Code (CalGreen) that was adopted by the City in 2010 requires preferential parking for carpools and low emission vehicles. With respect to the other suggested required measures, a number of policies already in the Draft General Plan call for evaluation of the feasibility of these types of measures. Staff does not intend to revise the Draft Plan to make these measures mandatory in advance of any analysis of their costs and benefits.

**FISCAL IMPACT:** N/A

**ENCLOSURES:** [Public comments \(7\) received on the DEIR](#)

**RECOMMENDATION:** Receive presentation and provide feedback to staff.



**8.1 Council Referrals – None.**

**8.2 Oral Reports on Meetings and Events**



## ACRONYMS

ABAG.....	Association of Bay Area Governments	FUSD .....	Fremont Unified School District
ACCMA .....	Alameda County Congestion Management Agency	GIS .....	Geographic Information System
ACE .....	Altamont Commuter Express	GPA.....	General Plan Amendment
ACFCD.....	Alameda County Flood Control District	HARB .....	Historical Architectural Review Board
ACTA .....	Alameda County Transportation Authority	HBA .....	Home Builders Association
ACTIA.....	Alameda County Transportation Improvement Authority	HRC .....	Human Relations Commission
ACWD.....	Alameda County Water District	ICMA .....	International City/County Management Association
BAAQMD .....	Bay Area Air Quality Management District	JPA .....	Joint Powers Authority
BART .....	Bay Area Rapid Transit District	LLMD .....	Lighting and Landscaping Maintenance District
BCDC .....	Bay Conservation & Development Commission	LOCC.....	League of California Cities
BMPs .....	Best Management Practices	LOS .....	Level of Service
BMR .....	Below Market Rate	MOU .....	Memorandum of Understanding
CALPERS.....	California Public Employees' Retirement System	MTC.....	Metropolitan Transportation Commission
CBD .....	Central Business District	NEPA .....	National Environmental Policy Act
CDD.....	Community Development Department	NLC.....	National League of Cities
CC & R's .....	Covenants, Conditions & Restrictions	NPDES.....	National Pollutant Discharge Elimination System
CDBG .....	Community Development Block Grant	NPO.....	Neighborhood Preservation Ordinance
CEQA .....	California Environmental Quality Act	PC.....	Planning Commission
CERT .....	Community Emergency Response Team	PD .....	Planned District
CIP .....	Capital Improvement Program	PUC.....	Public Utilities Commission
CMA .....	Congestion Management Agency	PVAW .....	Private Vehicle Accessway
CNG.....	Compressed Natural Gas	PWC.....	Public Works Contract
COF .....	City of Fremont	RDA .....	Redevelopment Agency
COPPS.....	Community Oriented Policing and Public Safety	RFP .....	Request for Proposals
CSAC.....	California State Association of Counties	RFQ.....	Request for Qualifications
CTC .....	California Transportation Commission	RHNA .....	Regional Housing Needs Allocation
dB .....	Decibel	ROP.....	Regional Occupational Program
DEIR.....	Draft Environmental Impact Report	RRIDRO .....	Residential Rent Increase Dispute Resolution Ordinance
DO .....	Development Organization	RWQCB .....	Regional Water Quality Control Board
DU/AC.....	Dwelling Units per Acre	SACNET .....	Southern Alameda County Narcotics Enforcement Task Force
EBRPD .....	East Bay Regional Park District	SPAA .....	Site Plan and Architectural Approval
EDAC .....	Economic Development Advisory Commission (City)	STIP .....	State Transportation Improvement Program
EIR.....	Environmental Impact Report (CEQA)	TCRDF.....	Tri-Cities Recycling and Disposal Facility
EIS .....	Environmental Impact Statement (NEPA)	T&O .....	Transportation and Operations Department
ERAF.....	Education Revenue Augmentation Fund	TOD .....	Transit Oriented Development
EVAW .....	Emergency Vehicle Accessway	TS/MRF .....	Transfer Station/Materials Recovery Facility
FAR .....	Floor Area Ratio	UBC .....	Uniform Building Code
FEMA.....	Federal Emergency Management Agency	USD.....	Union Sanitary District
FFD.....	Fremont Fire Department	VTa .....	Santa Clara Valley Transportation Authority
FMC.....	Fremont Municipal Code	WMA .....	Waste Management Authority
FPD.....	Fremont Police Department	ZTA.....	Zoning Text Amendment
FRC.....	Family Resource Center		

UPCOMING MEETING AND CHANNEL 27  
BROADCAST SCHEDULE

<i><b>Date</b></i>	<i><b>Time</b></i>	<i><b>Meeting Type</b></i>	<i><b>Location</b></i>	<i><b>Cable Channel 27</b></i>
September 27, 2011		No Council Meeting		
October 3, 2011	4-6 p.m.	Joint Council/FUSD Meeting	Council Chambers	Live
October 3, 2011	6:00 p.m.	Special Council Meeting	Council Chambers	Live
October 4, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
October 11, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
October 18, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
October 25, 2011		No Council Meeting		
November 1, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
November 8, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
November 15, 2011		Cancelled		
November 22, 2011		No Council Meeting		
November 29, 2011		No Council Meeting		
December 6, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
December 13, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
December 20, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
December 27, 2011		No Council Meeting		